RE SHARMA KUMARI SHUKLA, EX P DATO' ABDULLAH HISHAN MOHD HASHIM

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[BANKRUPTCY NO: D2-29-3892-1999]
11 FEBRUARY 2000

BANKRUPTCY: *Notice - Application to set aside - Set-off - Whether properly raised against creditor - Whether set-off equalled or exceeded judgment debt - Bankruptcy Rules 1969, r. 94(1)(b), 95*

BANKRUPTCY: *Notice - Particulars to be endorsed - Name of debtor - Whether name of debtor endorsed on notice must be as stated in identity card - Whether variation in names rendered notice bad - Whether sufficient if identity card number was correct - Bankruptcy Rules 1969, r. 94(1)(aa)*

This was the judgment debtor's appeal against the decision of the senior assistant registrar dismissing: (i) her application to strike out and/or set aside the bankruptcy notice, and for a stay of proceedings pending the said application, and (ii) her affidavit filed under r. 95 Bankruptcy Rules 1969 ('the Rules') to set aside the bankruptcy notice.

The challenges raised herein by the debtor were: (i) a set-off – on the basis that a company for which she had worked, and of which the judgment creditor was the executive director and main shareholder, owed her wages amounting to RM30,000; and (ii) that the bankruptcy notice was bad in law for failing to comply with r. 94(1)(aa) of the Rules in that it was not endorsed with the debtor's name *as per* her national registration identity card ('IC').

Held:

[1] An executive director of a company and the company are two separate entities. The set-off claimed by the debtor was against the company and not the creditor. For this reason alone, the debtor's challenge must fail. Furthermore, the RM30,000 set-off claimed by the debtor did not even equal or exceed the judgment debt (RM1,179,725.05) as was required by r. 94(1)(b) of the Rules. Consequently, an act of bankruptcy was deemed to have been committed by the debtor pursuant to r. 95(2) of the Rules.

[2] So long as the debtor had been properly identified as the person named in her IC with the correct IC number, and so long as the debtor herself had affirmed an affidavit acknowledging the address, there was sufficient compliance with r. 94(1)(aa) of the Rules. It was of no consequence that the debtor's name as endorsed on the bankruptcy notice differed from her name as stated in her IC.

[Appeal dismissed.]

Case(s) referred to:

Dato' Abdullah Hishan Hj Mohd Hashim v. Sharma Kumari Shukla (3) [1999] 7 CLJ 46 ***(refd)***

Datuk Lim Kheng Kim v. Malayan Banking Bhd [1993] 3 CLJ 324 ***(refd)***

Legislation referred to:

Bankruptcy Rules 1969, rr. 94(1)(aa), (b), 95(2)

For the judgment debtor - Roshan Kumar; M/s Ng Yook Woon, Andrew TC Saw & Co

For the judgment creditor - M Manoharan; M/s Karpal Singh & Co

Reported by Alex KC Lee

JUDGMENT

Facts

This court had in an earlier suit entered judgment together with interest in the sum of RM1,179,726.05 against the judgment debtor. (See *Dato' Abdullah Hishan bin Hj. Mohd Hashim v. Sharma Kumari Shukla (3)* [1999] 6 MLJ 589; [1999] 7 CLJ 46; [2000] 1 AMR 334.) Thereafter the judgment creditor filed and served a bankruptcy notice upon the judgment debtor.

The Applications

The judgment debtor then filed an application (encl. 10) to strike off and/or set aside the bankruptcy notice with costs and for a further order that all further proceedings be stayed pending the outcome of the said application. At the same time the judgment debtor also filed an affidavit (encl. 6) pursuant to r. 95 of the Bankruptcy Rules 1969 to set aside the bankruptcy notice. The learned senior assistant registrar (SAR) heard both enclosures and dismissed them with costs. Dissatisfied with the said decisions the judgment debtor appealed. After hearing arguments I dismissed both appeals with costs.

Findings Of The Court

At the outset counsel for the judgment debtor, Mr. Roshan Kumar, informed the court that since both the applications were for the same purpose, namely, to strike out or to set aside the bankruptcy notice, he would take both together in his submission. For clarity, it is necessary to set out r. 95 which reads as follows:

> 95. Application to set aside.
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> (1) The filing of an affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the Registrar shall fix a day for hearing the application, and shall give not less than three clear days' notice thereof to the debtor, the creditor and their respective solicitors, if known.
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> (2) If the application cannot be heard before the time specified in the notice for compliance with its requirements, the Registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

The Rule 95 Challenge

The judgment debtor raised the issue of set off. She claimed that a company called Glamoir World of Sports Sdn Bhd, which had employed her, had owed her RM30,000 as wages. She also averred that the judgment creditor was the Executive Director and the main shareholder of the said company. In *Datuk Lim Kheng Kim v. Malayan Banking Bhd* [1993] 3 CLJ 324; [1993] 2 MLJ 298, the then Supreme Court held that challenges to the creditor's petition or to the bankruptcy notice other than by way of a counterclaim, set off or cross demand which equals or exceeds the judgment debt must be made by filing a separate application supported by an affidavit. Whilst the approach taken by the judgment debtor in proceeding by way of a r. 95 application is correct I have to consider whether the judgment debtor is correct in law in doing so. Firstly, it is trite law that an executive director of a company and the company are two separate entities. The set off raised by the judgment debtor is against Glamoir World of Sports Sdn Bhd and not against the judgment creditor. On this issue alone, this challenge must fail. In any case, to be able to even claim a set off, r. 94(1)(b) requires that the court must be satisfied that the said set off either equals or exceeds the judgment debt. The set off claimed herein is a meagre RM30,000; neither does it equal nor exceed the judgment debt. On this issue too, the judgment debtor must fail. In the circumstances, pursuant to r. 95(2) of the Bankruptcy Rules 1969, an act of bankruptcy is deemed to have been committed by the debtor.

Other Challenges Under Enclosure 10

Mr. Roshan Kumar for the judgment debtor argued that the bankruptcy notice was bad in law as it had not stated the debtor's name as found in her identity card and that there was therefore non-compliance with r. 94(1)(aa). The name as stated in the bankruptcy notice is Sharma Kumari Shukla (NRIC No. 5932395). The name as stated in the identity card is Sharma Kumari a/p Oam Parkash (NRIC No. 5932395). To ascertain the merit in this submission it is necessary to reproduce r. 94 relating to the particulars that ought to be endorsed on the notice:

> 94. Particulars to be endorsed on notice.
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> (1) Every bankruptcy notice shall be endorsed with –
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> (a) the name and place of business of the solicitor who is suing out the notice, or if no solicitor is employed, with a memorandum that it is sued out by the creditor in person;
>
> (aa) the name and national Registration Identity Card number of the debtor.
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> (b) an intimation to the debtor that if he has any counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt, and which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar.
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> (2) In the case of a notice served in the Federation the time shall be seven days. In the case of a notice served elsewhere the Registrar when issuing the notice shall fix the time.

The judgment debtor argued that the judgment upon which the bankruptcy notice was founded was not entered in her official name as stated in her identity card. There is no dispute that the identity card number is stated correctly in the bankruptcy notice. I rejected this argument totally. Rule 94(1)(aa) merely requires the name and the National Registration Identity Card number of the debtor. If it was the intention of Parliament that the judgment debtor's submission is correct then it would have been so simple for the said rule to have read that the bankruptcy notice should have the National Registration Identity Card number and the name **as specified therein** (emphasis provided). Besides, the two affidavits affirmed by the judgment debtor bear the same address and identity card number as stated in the bankruptcy notice. It is my judgment that since the Bankruptcy Rules ought to be given a strict interpretation, it is not for this court to imply matters not specifically spelt out in the rules. I therefore hold that so long

as the judgment debtor has been properly identified as the person named in the National Registrataion Identity Card with the correct identity card number and so long as the judgment debtor herself has affirmed an affidavit acknowledging the address, there is sufficient compliance with r. 94(1)(aa) of the Bankruptcy Rules 1969.

There is one other matter that I must make mention of. In the course of the trial of the main suit leading to the incurring of this judgment debt, and which trial was heard by me for a period of over 30 days, the judgment debtor brought up this same issue, namely, that she was not the person named in the writ. The notes of evidence of the said proceedings have been exhibited by the judgment creditor in opposing this application. It is clear from the evidence of the judgment creditor that he had confirmed that both the names referred to the identity of the judgment debtor. The judgment debtor however never took the stand to deny or refute this evidence. Further Mr. Gurbachan Singh, counsel for the judgment debtor in the civil proceedings, himself proceeded (see p. 62 of my notes of proceedings) to question the judgment creditor on the identity of the defendant/judgment debtor in respect of her name. I then interjected to enquire if there was any dispute as to the identity of the defendant/ judgment debtor and Sharma Kumari Shukla. Mr. Gurbachan Singh then made the concession that there was no difference. I reproduce verbatim what I recorded at p. 62 of my notes of proceedings:

> At this stage to a question from the Court as to whether the name Sharma Kumari Shukla dan Sharma Kumari refer to one and the same person in Court hearing, Mr. Gurbachan very kindly makes the concession that they are one and the same.

It is difficult to understand the judgment debtor. She was present in court when her counsel conceded that there was no dispute as to the names and that she was the defendant as named in the writ. And it is that same name that is now referred to in the bankruptcy notice. How then can she affirm two affidavits, one to make a challenge under r. 95 and the other in support of the application to strike off the bankruptcy notice and affirm in both affidavits that she is not the person properly named. To my mind such conduct can be construed as an attempt to deceive the court or such conduct can be construed as an attempt to lull the judgment creditor to a state of complacency by conceding at the trial that the names refer to the defendant/judgment debtor and thereby preventing him from seeking a ruling on that issue at the trial proper itself. I hold that by making such a concession through her counsel the judgment debtor is bound by such an admission and is clearly estopped from raising this issue again. If I accept the judgment debtor's submission that the name as stated in the bankruptcy

notice does not refer to the actual judgment debtor, then it would be tantamount to the judgment debtor saying, "You take whatever judgment you want against me, but you can't take any form of execution against me." Such cannot be the law. The majesty of justice that is symbolised by a blindfolded lady will be castigated as justice being blind. The wicked machinations of scheming judgment debtors will derail and deride the successful judgment creditor's attempts to execute upon their judgments. No court must allow that; and so I shall not.